| LAURA D, WITHERS Assistant United States Attorney 2500 Tulare Street, Suite 4401 Fresno, CA 93721 Telephone: (559) 497-4090 Attorneys for Plaintiff United States of America  IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA  UNITED STATES OF AMERICA, Plaintiff, STIPULATION TO CONTINUE CONFERENCE AND EXCLUD THE SPEEDY TRIAL ACT; FIN ORDER  ALBERTO SOLORIO-CARLOS, Defendant.  Defendant.  Defendant.  This case is set for status conference on March 17, 2021. On May 13, 2020, 11 Time: 1:00 p.m. COURT: Hon. Sheila K. Oberto  This case is set for status conference on March 17, 2021. On May 13, 2020, 11 Time: 1:00 p.m. COURT: Hon. Sheila K. Oberto  This case is set for status conference on March 17, 2021. On May 13, 2020, 11 Time: 1:00 p.m. COURT: Hon. Sheila K. Oberto  U.S.C. § 3174, and the Ninth Circuit Judicial Council's Order of April 16, 2020 cont judicial emergency, this Court has allowed district judges to continue all criminal may May 2, 2021. This and previous General Orders, as well as the declarations of judic were entered to address public health concerns related to COVID-19.  Although the General Orders and declarations of emergency address the distr  | 1  | McGREGOR W. SCOTT United States Attorney  |  |  |
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findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally or in writing").

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial emergency require specific supplementation. Ends-of-justice continuances are excludable only if "the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless "the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Id*.

The General Orders and declaration of judicial emergency exclude delay in the "ends of justice." 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). <sup>2</sup> If continued, this Court should designate a new date

<sup>&</sup>lt;sup>2</sup> The parties note that General Order 612 acknowledges that a district judge may make "additional findings to support the exclusion" at the judge's discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

for the status conference *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be "specifically limited in time").

## **STIPULATION**

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

- 1. By previous order, this matter was set for status on March 17, 2021.
- 2. By this stipulation, defendant now moves to continue the status conference until May 19, 2021, and to exclude time between March 17, 2021, and May 19, 2021, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].
  - 3. The parties agree and stipulate, and request that the Court find the following:
  - a) The government has represented that the discovery associated with this case has been either produced directly to counsel and/or made available for inspection and copying.
  - b) Counsel for defendant desires additional time to consult with her client, to review the current charges, to conduct investigation and research related to the charges, to review discovery for this matter, and to discuss potential resolutions with her client and with counsel for the government.
  - c) Counsel for defendant believes that failure to grant the above-requested continuance would deny her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.
    - d) The government does not object to the continuance.
  - e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.
  - f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of March 17, 2021 to May 19, 2021, inclusive, is deemed excludable pursuant to 18 U.S.C.§ 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest

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| 1  | of the public and the defendant in a speedy trial.  |   |  |
|----|---|---|--|
| 2  | 4. Nothing in this stipulation and  | d order shall preclude a finding that other provisions of the |  |
| 3  | Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial |   |  |
| 4  | must commence.  |   |  |
| 5  | IT IS SO STIPULATED.  |   |  |
| 6  |   |   |  |
| 7  |   |   |  |
| 8  | Dated: March 8, 2021  | McGREGOR W. SCOTT United States Attorney                      |  |
| 9  |   |   |  |
| 10 |   | /s/ LAURA D. WITHERS LAURA D. WITHERS                         |  |
| 11 |   | Assistant United States Attorney                              |  |
| 12 |   |   |  |
| 13 | Dated: March 8, 2021  | /s/ JAYA C. GUPTA<br>JAYA C. GUPTA                            |  |
| 14 |   | Counsel for Defendant ALBERTO SOLORIO-                        |  |
| 15 |   | CARLOS  |  |
| 16 |   |   |  |
| 17 | FIND  | INGS AND ORDER  |  |
| 18 | IT IS SO ORDERED.   |   |  |
| 19 | III IS SO ORDERED.  |   |  |
| 20 | Dated: March 9, 2021  | Isl Sheila K. Oberto  |  |
| 21 |   | UNITED STATES MAGISTRATE JUDGE                                |  |
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